IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Criminal Appeal No. 668 of 2000

Date of Decision: 22nd November, 2007

State of H.P.		Appellant
	Versus	
Gurbax Singh		Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For the respondent: Mr.Sanjay Dutt Vasudeva, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of the judgment dated 15.7.2007 passed by Judicial Magistrate, Ist Class (II), Dharamshala, District Kangra, HP in Case No. RBT No.22-II/99 titled as State vs. Gurbax Singh acquitting the accused of the charged offence.

As per the case of the prosecution on 26.9.1998 complainant SI R.P.Jaswal (PW-2), Constable Malkiat Singh (PW-14) were going on patrolling duty towards Bus Stand and Cantt Road in Dharamshala, H.P. at about 7.20 p.m., they noticed the accused alongwith two other persons hurling filthy abuses under the influence of liquor. They were asked to stop abusing and directed the accompanying persons to leave the accused at his house. After some time the complainant came back and after reaching the place near Fwara Chowk, again found the accused and his two companions hurling filthy abuses causing

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

embarrassment to the passers-by including women. The complainant prevented the accused from doing the same at which the accused started quarrelling, pulled the name-plate put on the complainant's uniform and also started abusing the complainant. At that moment, ASI Kailash Chand, ASI Surinder Kumar, Constables Surinder, Ranjit and driver Jagdeep came in a vehicle and rescued the complainant from the accused. The accused was taken to the Zonal Hospital, Dharamshala for medical examination where he was examined by the Medical officer Dr. Vinay Kumar (PW-6), who issued his Medico Legal Certificate (Ext.PW-6/A). The report (Ext.PW-12/C) was lodged by the complainant and FIR No.229 of 1998 (Ext.PW-15/A) under Section 353, 294 IPC was registered with Police Station, Dharamshala. The Chemical Examiner's report (Ext.PW-15/C) was obtained by the Investigating Officer.

After completion of the investigation, challan was presented in the Court and the accused was charged for an offence under Sections 294 and 353, IPC. The accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined 15 witnesses and the statement of the accused under Section 313, Cr.P.C. was also recorded.

The Court below acquitted the accused of the charged offence on the ground that the testimony of the spot witnesses, all of whom were police officials did not inspire confidence to prove the guilt of the accused beyond reasonable doubt.

I have perused the record. The accused is alleged to have committed the offence under Section 294, IPC twice on 26.9.1998 and an

offence under Section 353 IPC when offence under Section 294, IPC was committed on the second occasion.

PW-2 and PW-14 are alleged to have witnessed the incident in relation to an offence under Section 294, IPC on the first occasion and PW-3, PW-4 and PW-5 are alleged to have witnessed the incident in relation to an offence under Sections 294 and 353, IPC subsequently. PW-2 and PW-14 have not stated the exact words which were being uttered by the accused. In order to hold a person guilty of an offence under Section 294, IPC the prosecution had to prove that the accused, at a public place had uttered obscene words which caused annoyance to the others. The testimony of PW-2 and PW-14 is silent about the exact words uttered by the accused. Their testimony is also silent of the fact that the utterances were obscene and caused annoyance to others. No women or other independent persons have been examined. In this view of the matter, it cannot be said that the accused is guilty of commission of offence under Section 294, IPC.

Mohan Singh (PW-8) the only independent witness has not supported the case of the prosecution. He was declared hostile and cross-examined by the Public Prosecutor at length. There is nothing in his statement which would prove the case of the prosecution.

This leaves us with the testimony of ASI Surinder Kumar (PW-1), SI R.P.Jaswal (PW-2), Constable Surinder Kumar (PW-3), ASI Kailash Nath (PW-4), Shri Jagdeep (PW-5), Shri Mohan Singh (PW-8), Constable Ranvir Singh (PW-13) and Constable Malkiat (PW-14). Perusal of their statements would show that there are material contradictions. PW-1 and PW-2 have contradicted themselves on the

timing of the incident. As per the version of PW-1 the incident took place at about 8.30 p.m., whereas as per the version of the complainant PW-2, the incident took place at 7.30 p.m. The uniform and the name plate (badge) of PW-2, were not taken as a case property and produced in the Court. It has come through the evidence of PW-14 that at the time of incident 100-200 persons had gathered at the spot to witness the incident. This version is not supported by any of the other witnesses.

The accused undoubtedly has been found under the influence of alcohol. However, he has not been charged for any offence in relation thereto. It has come through the deposition of Dr. Vinay Kumar (PW-6) and Medico Legal Certificate (Ext.PW-6/A), that there were injuries on the body of the accused. The suggested defence of the accused is to the effect that he had been falsely implicated as the police officials had not only beaten him but also threatened him of falsely implicating him in a false case. The injury on the body of the accused has not been explained by the police at all. In fact they are totally silent about the same. This only renders the story of the prosecution to be false.

The accused has the advantage of having been acquitted by the Court below. The material on record has been considered in its entirety. I see no perversity in the same. For the reasons set out above, I see no reason to interfere with the impugned judgment. The appeal is accordingly dismissed and the bail bonds are discharged.

22nd November, 2007 (Sanjay Karol), J.
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